IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.411 OF 2003

Smt.Manjula S.Sule & Anr. ...Petitioners

Versus

Smt.Shewantabai & Ors. ...Respondents

Shri S.G.Deshmukh for the Petitioners.
None for the Respondents.

CORAM : S.C. DHARMADHIKARI, J.
DATE : JANUARY 10, 2006.

P.C.:

1. Heard Shri Deshmukh for the petitioners. The office-report shows that the Writ Petition is served on respondent No.2; whereas it stands dismissed against respondent Nos.3 to 6. None appears for respondent No.2, although served. Respondent No.1 has already expired.

2. The challenge in this Writ Petition is to an order passed by the lower Appellate Court confirming an order passed by the trial Court. It appears that the petitioners filed Civil Suit before the Civil Court and applied for temporary injunction. Similarly, defendants to the Suit also took out an application for injunction naturally to protect their possession in respect of the suit properties. It is

pointed out by the petitioners that the trial Court had categorically observed that the plaintiffs' possession stands prima-facie proved so also the obstruction thereto by the defendants. In these circumstances, at the instance of the defendants other orders could not have been passed. More so, when prima-facie it was pointed out to the Courts below that co-owners or co-shareres cannot be restrained from enjoying the property which is in their possession and comes to their shares.

3. That apart, this Court had directed issuance of Notice Before Admission as early as on 29th January, 2003 and granted ad-interim orders in terms of prayer Clause (C) of the Writ Petition, which reads thus :

> "C] To grant stay of the Judgment and Order passed by the learned IInd Additional District Judge, Sangali in Misc.Civil Appeal No.216 of 1996 and the order dated 19/09/1996 passed by the learned Civil Judge, Junior Division, Tasgaon below petition Exhibit 30 in Regular Civil Suit No.183 of 1996, during the pendency of this Petition;"

4. Shri Deshmukh learned Counsel appearing for the petitioners pointed out that the ad-interim stay granted by this Court to the order below Exh.30 in Regular Civil Suit No.183 of 1996 sufficiently protects the interest of the petitioners and that it

does not affect the injunction order granted in favour of the petitioners in the said Civil Suit. Considering the non-appearance of second respondent, in my view interest of justice would be served if the order passed by this Court on 29th January, 2003 is directed to be continued during pendency of the Regular Civil Suit No.183 of 1996 on the file of the learned Civil Judge, Junior Division, Tasgaon. Needless to state that all observations made in the order challenged in this Petition as well as that by the trial Court are prima-facie and merely because interim injunction as granted in favour of the petitioners is continued, same shall not influence the Courts below while disposing of the Suit and the same shall be disposed of on its own merits and in accordance with law.

(S.C.DHARMADHIKARI,J.)